

REMARKS

Claims 110-131 are currently pending in the application. Claims 98-109 and 132-139 have been previously withdrawn. Claims 117 and 128 are canceled without prejudice or disclaimer. Claims 110, 112, 113, and 120-125 are amended herein. Applicants submit that support for the foregoing amendments may be found throughout the specification and that no new matter has been added by way of this amendment. Applicants explicitly reserve the right to add/pursue the claims as originally filed at a later date and/or in a continuation/divisional application. Applicants have amended the claims to better capture disclosed embodiments of interest. Furthermore, Applicants submit that the amended claims, as well as the originally filed claims are patentably distinct from the cited references. Applicants respectfully request reconsideration of the instant application in view of the foregoing amendments and the following remarks.

Rejections under 35 U.S.C. § 102

Claims 110-115 and 117-121 and 123-130 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Fisher et al. (US Patent No. 5,835,896) (hereinafter "Fisher"). Applicants respectfully submit that Fisher does not discuss every element of the claims and therefore, does not anticipate the pending claims.

Amended independent claim 110 recites, inter alia:

110. A method for using a computer to process the sale of goods or services, comprising:
 receiving a conditional purchase offer...
 accessing seller defined rules that define conditional purchase offer acceptance/rejection parameters;
 applying the accessed seller defined rules to compare said conditional purchase offer with seller inventory and pricing information to determine if said conditional purchase offer is acceptable; and

- if said conditional purchase offer is unacceptable,
 - (a) transmitting a rejection of said conditional purchase offer to said customer;
 - (b) processing the conditional purchase offer to determine whether to apply a repeated conditional purchase offer deterrence action; and
 - (c) if it is determined that a deterrence action is necessary, taking an action to deter the customer from submitting multiple conditional purchase offers for said goods or services.

Applicants submit that the cited reference does not anticipate at least aspects of deterrence as recited in claim 110.

The Examiner asserts that Fisher discusses that action is taken to deter the customer from submitting multiple purchase offers in two instances: (1) "FIG. 5, step 43, bid validation step can prevent a bid from being submitted"; and (2) "step 53 of closing an auction can deter further bidding on the closed item." (See Office Action, Page 3, ¶3.) Applicants disagree that either aspect of Fisher is effective to "deter the customer from submitting multiple conditional purchase offers for said goods or services". Applicants submit that Fisher's bid validation mechanism processes a bid and simply ensures that the bid data formatting is error-free. Fisher's validator 21 does not "compare said conditional purchase offer with seller inventory and pricing information to determine if said conditional purchase offer is acceptable", as claimed. Instead, Fisher discusses, "Bid validator 21 examines the bid information entered by the customer on bid form 20 to ensure that the bid is properly formatted, all necessary data is present, and the data values entered look credible" (See Fisher, Col. 7, lines 50-65). For example, Fisher checks bid data formatting for items such as "zip code", "state abbreviation" and "facsimile number" to determine proper format (See Fisher, Col. 7, lines 50-65).

If Fisher's bid validator 21 determines that the bid data is not properly formatted, it sends an error message that includes the error details to the bidder. More specifically, in the description of Fig. 5, relied on by the Examiner, Fisher discusses that "if the bid data includes

one or more errors, then an error message is returned 44 to the bidder... itemizing the errors found in the bid" (See Fisher, Col. 8, lines 30-41). However, Applicants submit that indicating there are format errors in the bid does not correspond with deterring multiple bids.

Regarding the Examiner's point (2), Applicants submit that the step of closing an auction to deter multiple bids on the item simply renders the auction mechanism inoperable. Moreover, closing an auction to deter a user cuts against the fundamental characteristic of auctions where the auction remains open as long as bidders are willing to compete against each other by submitting multiple bids for an item.

Accordingly, Applicants submit that Fisher's system directly contrasts the claimed elements. More specifically, Applicants submit that Fisher discusses that when a customer is notified by Fisher's auction manager 26 of a bid that is not accepted, the customer is encouraged to place a new increased bid. For example, Fisher discusses that "the system may send electronic mail notifications to bidders ... and encourage the bidder to submit a new and higher bid to outbid the current high bidder" (Emphasis added)(See Fisher, Col. 6, lines 48-54). Fisher also discusses that "bidders may reply to an electronic mail notification message 24 informing them that they have been outbid by including an increased bid amount in the reply message" (See Fisher, Col. 8, lines 24-27). Accordingly, Applicants submit that Fisher, in direct contrast to the claimed elements, encourages the customer whose bid is not accepted to increase his bid amount and submit multiple bids.

Accordingly, Applicants submit that Fisher does not discuss each and every element of the claimed method and therefore does not anticipate claim 110 for at least this reason. Further, although amended independent claim 123 has different scope, Applicants submit that Fisher does not anticipate independent claim 123 for at least similar reasons. Applicants submit that Fisher does not anticipate claims 111-115 and 118-121 and 124-126 and

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129-130, which are directly or indirectly dependent on independent claims 110 or 123 respectively, for at least similar reasons.

Accordingly, Applicants request withdrawal of this ground of rejections for at least these reasons.

Rejections under 35 U.S.C. § 103

Claims 116, 122 and 131 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Fisher in view of Official Notice. Applicants respectfully traverse the rejections and the various instances where the Examiner has taken Official Notice.

Applicants submit that it was not well known to practice to "pre-authorizing said offer price of said conditional purchase offer with a financial clearinghouse", as claimed in claim 116, at the time the application was filed within the context of the recited claim elements of claim 116 or independent claim 110 (on which claim 116 depends). Furthermore, Applicants submit that pre-authorizing a purchase amount on a credit card for an item such as holding a reservation for a hotel room does not parallel "receiving a payment identifier specifying a financial account for use in providing guaranteed payment for said goods or services if said conditional purchase offer is accepted" as recited in claim 110, wherein the offer price of the conditional purchase offer is pre-authorized with a financial clearinghouse, as in dependent claim 116. Furthermore, Applicants traverse the Examiner's assertions of Official Notice with respect to claims 122 and 131 and submit that when the claims are considered as a whole, the items recited in claims 122 and 131 were not well known in the context of the claimed elements, at the time the application was filed. Accordingly, Applicants request the Examiner provide documentary evidence establishing that the elements recited in claims 116, 122 and 131 were "well known" as alleged by the Examiner within the context of the claimed invention at the time

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the application was filed. MPEP § 2144.03 requires that the Examiner "must provide documentary evidence in the next Office Action if the rejection is to be maintained." (See MPEP § 2144.03(C) citing 37 CFR 1.104(c)(2)).

Furthermore, Applicants submit that the deficiencies identified above in Fisher with regard to independent claim 110 are also relevant with regard to the § 103 rejection of claims 116, 122 and 131. Moreover, Applicants submit that the traversed instances of Official Notice fail to remedy the deficiencies discussed above. Accordingly, Applicants submit that dependent claims 116, 122 and 131 are not rendered obvious by Fisher or the traversed instances of Official Notice, taken alone or in combination, for at least similar reasons.

Accordingly, Applicants request withdrawal of this ground of rejections for at least these reasons.

Conclusion

Consequently, the reference cited and/or any official notice taken by the office action do not result in the claimed invention, there was/is no motivation for such a combination of references (i.e., cited references do not teach, read on, suggest, or result in the claimed invention(s)), and the claimed inventions are not admitted to be prior art. Thus, Applicants respectfully submit that the supporting remarks and claimed inventions, the pending claims, all: overcome all rejections and/or objections as noted in the office action, are patentable over and discriminated from the cited reference(s), and are in a condition for allowance. Furthermore, Applicants believe that the above remarks, which distinguish the claims over the cited reference(s), pertained only to noted claim element portions. These remarks are believed to be sufficient to overcome the prior art. While many other claim elements were not discussed,

Applicants do not concede that any such elements are found in the prior art and/or within any official notice taken in the office action, and as such, Applicants assert that all such remaining and not discussed claim elements, all, also are distinguished over the prior art, including any official notice taken in the office action, and explicitly reserves the opportunity to more particularly remark and distinguish such remaining claim elements at a later time should it become necessary. Further, any remarks that were made in response to an Examiner objection and/or rejection as to any one claim element, and which may have been re-asserted as applying to another Examiner objection and/or rejection as to any other claim element(s), any such re-assertion of remarks is not meant to imply that there is commonality about the structure, functionality, means, operation, and/or scope of any of the claim elements, and no such commonality is admitted as a consequence of any such re-assertion of remarks. As such, Applicants do not concede that any claim elements have been anticipated and/or rendered obvious by any of the cited reference(s). Accordingly, Applicants respectfully request allowance, and the reconsideration and withdrawal of the rejection(s) and/or objection(s).

AUTHORIZATION

The Commissioner is hereby authorized to charge any additional fees which may be required for consideration of this Amendment to Deposit Account No. 03-1240, Order No. 17200-020CT1.

In the event that an additional extension of time is required, or which may be required in addition to that requested in a petition for an extension of time, the Commissioner is requested to grant a petition for that extension of time which is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any

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overpayment for an extension of time to Deposit Account No. 03-1240, Order No. 17200-020CT1.

Respectfully submitted,
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